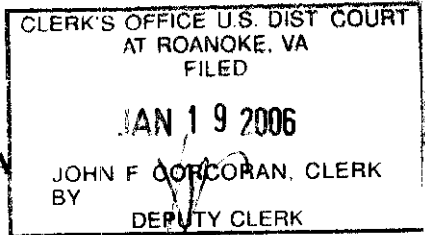


IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION



ROBERT JAMES GRAVES,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

Civil Action No. 7:05-cv-00796
Crim. No. 4:99-cr-70049

MEMORANDUM OPINION

By: Hon. Norman K. Moon
United States District Judge

Petitioner Robert James Graves, a federal inmate proceeding pro se, brings this action as a motion to reduce sentence, pursuant to 18 U.S.C. § 3582(c)(2). Because Graves actually complains about the manner in which his criminal sentence was calculated in 2000, however, the court also construed and filed his pleading as a motion to vacate, set aside or correct sentence, pursuant to 28 U.S.C. § 2255. Upon review of the record, the court summarily denies petitioner's motion and dismisses this action.

First, Graves has no ground for relief under § 3582. This provision authorizes an inmate to move for reduction of sentence based on a retroactive amendment to the United States Sentencing Guidelines after the court imposes sentence on him. Graves asserts that he is entitled to resentencing under Amendment 505, effective in November 1995, well before Graves was sentenced in 2000. Thus, Graves should have raised his current allegations at trial, on appeal and in his first § 2255 motion. His motion must be denied under § 3582.

Second, to the extent that Graves challenges the validity of his sentence, his action must be construed and dismissed as a successive § 2255 motion. Court records indicate that Graves previously filed a § 2255 motion, Civil Action No. 7:03-cv-00421. The court addressed his claims on the merits and denied relief; the United States Court of Appeals for the Fourth Circuit affirmed this judgment on appeal. As Graves's current motion thus constitutes a second or successive motion, he may not bring it in this court unless he first obtains certification from the Fourth Circuit to do so. See § 2255, ¶8. He offers no indication that he has obtained such certification. Thus, the court will summarily dismiss his motion as successive. An appropriate order shall be issued this day.

The petitioner is advised that he may appeal this decision, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure, if a judge of the circuit court of appeals or this court issues a certificate of appealability, pursuant to 28 U.S.C. §2253(c). A certificate of appealability may issue only if the applicant has made a substantial showing of the denial of a constitutional right. §2253(c)(1). Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right." Therefore, this court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. See Miller-El v. Cockrell, 537 U.S. 322 (2003); Slack v. McDaniel, 529 U.S. 473 (2000). If petitioner intends to appeal and seek a certificate of appealability from the Circuit Court of Appeals for the Fourth Circuit, his first step is to file a notice of appeal with this court within 60 days of the date of entry of this Order, or within such extended period as the court may grant pursuant to Rule 4(a)(5).

The Clerk is directed to send certified copies of this memorandum opinion and accompanying order to petitioner and to counsel of record for the respondent.

ENTER: This 16th day of January, 2006.


United States District Judge